IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITIONS NO. 178/2007 & 252/2007

WRIT PETITION NO. 178/2007

Tulshidas Soiru Laad,
son of late Soiru Suraji S. Laad,
aged 61 years, retired
School Headmaster, Indian National,
r/o. House NO.410, `Kavery Nivas'
Sanvordem Tisk,
Post Curchorem – 403 706. ..... Petitioner.

V/s.

1. Shri Saude Vincent Rodrigues,
major in age, r/o. Gadni Bag Xir,
Sanvordem, Tisk, Post Curchorem Goa

2. Shri Pascoal Vincent Rodrigues,
major in in age, r/o. Gadni Bag Xir,
Sanvordem, Tisk, Post Curchorem Goa

3. Shri Socorro Vincent Rodrigues,
major in age, r/o. Gadni Bag Xir,
Sanvordem, Tisk, Post Curchorem Goa ..... Respondents.

Mr. P. A. Kholkar, Advocate for the petitioner.

Mr. D. Pangam, Advocate for the respondents.

WRIT PETITION NO. 252/2007

Shri Saude Vincent Rodrigues,
major in age, r/o. Gadni Bag Xir,
Sanvordem, Tisk, Post Curchorem Goa. ..... Petitioner.

V/s.

1. Tulshidas Soiru Laad,
son of late Soiru Suraji Sinai Laad,
aged 61 years, retired
School Headmaster, Indian National,
r/o. House No.410, `Kavery Nivas'
Sanvordem Tisk,
Post Curchorem - Goa through his
constituted attorney, resident of
Sanvordem-Goa.

2. Shri Pascoal Vincent Rodrigues,
major in in age, r/o. Gadni Bag Xir,
Sanvordem, Tisk, Post Curchorem Goa

3. Shri Socorro Vincent Rodrigues,
major in age, r/o. Gadni Bag Xir,
Sanvordem, Tisk, Post Curchorem Goa ..... Respondents.

Mr. D. Pangam, Advocate for the Petitioner.

Mr. P. A. Kholkar, Advocate for the respondent No.1.

CORAM : S.A. BOBDE, J.

DATE : JUNE 29, 2007.

ORAL JUDGMENT :

Rule, returnable forthwith. Heard by consent.

2. In Writ Petition No.178/07, the petitioner has challenged the order dated 22.3.07, refusing appointment of a Commissioner in respect of the suit property. In Writ Petition No.252/07, the petitioner is on the other side, who has challenged the appointment of a new commissioner on the

sole ground that one of the parties is dis-satisfied with the report of the Commissioner. This order is dated 6.2.2007.

3. Thus, what has happened is that the learned Civil Judge, Jr. Division has passed an order dated 6.2.2007 directing that steps be taken to appoint a new Commissioner, without accepting or rejecting the report of the earlier Commissioner, only on the ground that the plaintiff is dis-satisfied with the report. Later on, the learned trial Court has declined to appoint a new Commissioner. The plaintiff made such a request by way of an application. The situation requires to be corrected.

4. Admittedly, the earlier Commissioner has submitted a report on 31.1.2007. That report has, till date, neither been accepted nor rejected. By the order impugned in Writ Petition No.252/07 dated 6.2.2007, the Court has permitted to take steps for appointment of a new Commissioner. Thereafter, the plaintiff's request for appointment of a new Commissioner was rejected.

5. In the circumstances, it would be appropriate to direct the learned Civil Judge, Jr. Division, at Sanguem to first deal with the Commissioner's report dated 31.1.07 and pass an order thereof, accepting or rejecting it, in accordance with law and take further steps as may be necessary to elucidate

the controversy in the suit. The impugned orders in both the writ petitions are set aside. Both the writ petitions are allowed. Order accordingly.

S.A. BOBDE, J.

ssm.